

1
2
3
4
5
6 UNITED STATES DISTRICT COURT
7 WESTERN DISTRICT OF WASHINGTON
8 AT SEATTLE

9 CITY OF SEATTLE,

10 Plaintiff,

11 v.

12 MONSANTO COMPANY, et al.,

13 Defendants.
14

Case No. 2:16-CV-107-RSL

ORDER GRANTING
PLAINTIFF'S REQUEST
FOR JUDICIAL NOTICE

15 This matter comes before the Court on plaintiff City of Seattle's ("Seattle") "Motion
16 Requesting Judicial Notice of Documents in Support of Plaintiff's Motion to Dismiss
17 Counterclaims and Certain Defenses." Dkt. #94. Seattle requests that judicial notice be taken of
18 eight documents. Id. at 2-3.

19 **BACKGROUND**

20 Seattle filed a complaint against Monsanto¹ in 2016. Dkt. #31. Monsanto filed
21 counterclaims against Seattle in 2017. Dkt. #63. Seattle then filed a motion to dismiss
22 Monsanto's counterclaims, Dkt. #92, along with this request for judicial notice. Dkt. #94.
23

24
25 ¹ The original Monsanto Company ("Old Monsanto") operated an agricultural products business,
26 a pharmaceutical and nutrition business, and a chemical products business. Through a series of
27 transactions beginning in approximately 1997, Old Monsanto's business was spun off into three separate
28 corporations. Monsanto operates the agricultural products business. Pharmacia operates the
pharmaceutical business. Solutia operates the chemical products business. Dkt. #31 at ¶¶ 30-34. The
Court refers to the three defendants/counterclaimants collectively as "Monsanto" in this order.

1 On April 16, 2013, the United States and the State of Washington jointly sued Seattle for
2 violations of the Clean Water Act, see 33 U.S.C. § 1319(b), (d); and the Washington Water
3 Pollution Control Act, see RCW §§ 90.48.037, 90.48.144 for the discharge of pollutants of raw
4 sewage. Ex. 11, Dkt. #76-13 at 2, 10–12. The suit was resolved by a consent decree (“Consent
5 Decree”). Ex. 3; Dkt. #76-5; Ex. B, Dkt. #94-1 at 24–98.

6 DISCUSSION

7 **A. Legal Standard**

8
9 On a motion to dismiss, the Court considers documents incorporated into the complaint
10 by reference and matters of which a court may take judicial notice. Tellabs, Inc. v. Makor Issues
11 & Rights, Ltd., 551 U.S. 308, 322 (2007) (citation omitted). The Court may take judicial notice
12 of a fact that is not subject to reasonable dispute because it is generally known within the
13 Court’s territorial jurisdiction, or “can be accurately and readily determined from sources whose
14 accuracy cannot reasonably be questioned.” Fed. R. Evid. 201(b). This may include undisputed
15 matters of public record. Carlson v. Wells Fargo Bank, N.A., No. C15-0109JLR, 2015 WL
16 2062394, at *4 (W.D. Wash. May 4, 2015) (citing Harris v. Cnty. of Orange, 682 F.3d 1126,
17 1131–32 (9th Cir. 2012)).

18 **B. Exhibits A, B, F, G, H and I**

19
20 Seattle’s Exhibits A, B, G and H are referenced in Monsanto’s Amended Answer and
21 Counterclaims and are therefore suitable for judicial notice. Dkt. #91 at ¶¶ 46, 66–67, 49;² see
22 Fed. R. Evid. 201(b). Exhibit F is an Administrative Order (“AO”) from the State of
23 Washington’s Department of Ecology (“Ecology”) regarding the West Point Wastewater
24 Treatment Plant. See Ex. F, Dkt. #94-1 at 123–136. Exhibit I is a portion of Monsanto’s
25 responses to Requests for Admission from Seattle. See Ex. I, Dkt. #94-1 at 151–55. Monsanto
26 also has no objection to Exhibits F or I. See Dkt. #101 at 2.

27
28 ² Part of Exhibit B was also annexed as an exhibit to Monsanto’s counterclaims. See Ex. 3; Dkt.
#76-5.

1 **C. Exhibits C, D and E**

2 Exhibit C is a letter from the Environmental Protection Agency (“EPA”) and Ecology
3 approving Seattle’s Final Plan to Protect Seattle’s Waterways as “substantially conforming to
4 the EPA’s *CSO Control Policy* and *CSO Guidance for Long-Term Control Plan* as well as
5 satisfying the City’s NPDES [National Pollutant Discharge Elimination System] permit
6 requirement for a CSO Reduction Plan Amendment and WAC 173-2450040.” Ex. C, Dkt. #94-1
7 at 101. Exhibit D is a letter from the EPA approving Seattle’s *Capacity, Management,*
8 *Operations, and Maintenance Performance (“CMOM”) Plan* and its *Floatables and Solids*
9 *Observation Plan*. See Ex. D, Dkt. #94-1 at 105. Exhibit E consists of five letters from the EPA
10 and Ecology imposing stipulated penalties for dry weather Combined Sewer Outflows (“CSOs”)
11 and Sewer Outflows (“SOs”). Ex. E, Dkt. #94-1 at 107–121. All three exhibits reference the
12 Consent Decree.

13 Monsanto objects to Exhibits C, D and E (collectively, “the Exhibits”). Dkt. #101 at 2.
14 Monsanto does not dispute that letters from the EPA and Ecology generally contain facts that
15 “can be accurately and readily determined” and are a source “whose accuracy cannot reasonably
16 be questioned.” Dkt. #101 at 2–3; see Fed. R. Evid. 201(b). However, Monsanto argues that the
17 Exhibits are not relevant to the issues before the Court. Id. at 3; see Santa Monica Food Not
18 Bombs v. City of Santa Monica, 450 F.3d 1022, 1025 n.2 (9th Cir. 2006).

19 Monsanto’s Third Counterclaim alleges that Seattle has violated the Clean Water Act
20 (“CWA”) and various NPDES Permits. Dkt. #91 at ¶¶ 180-208. It includes allegations regarding
21 the adequacy of Seattle’s sewer and treatment systems and the occurrence of Combined Sewer
22 Outflows (“CSOs”) in rainy and dry weather. Id. at ¶¶ 186-200. Monsanto seeks “a Court order
23 enjoining [Seattle] from violating the substantive and procedural requirements of the CWA and
24 the City NPDES Permits and requiring [Seattle] to remediate its discharges of pollutants.” Id. at
25 86. In its motion to dismiss, Seattle argued *inter alia* that the Consent Decree addresses the same
26 requirements as Monsanto’s CWA counterclaim, and as the EPA is diligently prosecuting the
27 Consent Decree, the counterclaim is barred. Dkt. #95-1 at 21–22; see 33 U.S.C. § 1365(b)(1)(B).

The Exhibits are annexed to demonstrate that the EPA has been diligently enforcing the Consent Decree. Dkt. #102 at 2–3.

The Court agrees that the Exhibits are relevant. Monsanto argues that the Consent Decree does not address Seattle’s violations of water quality standards for PCBs, which is the subject of its counterclaim. Dkt. #101 at 4. However, there is significant overlap between the Consent Decree and Monsanto’s counterclaim. See Dkt. #95-1 at 21–22; see Countercl. at ¶¶ 186–200 (allegations concerning Seattle’s conveyance systems and CSOs); see Ex. B, Dkt. #94-1 at 30 (“The objectives of this Consent Decree ... are to set out the requirements that the City will implement to reduce Combined Sewer Overflows and to achieve the goal of eliminating Sewer Overflows ...”). The Exhibits are therefore more than “marginally relevant to the issues presented.” Ruiz v. Darigold, Inc./Nw. Dairy Ass’n, No. C14-1283RSL, 2014 WL 5599989, at *1 (W.D. Wash. Nov. 3, 2014).

For all the foregoing reasons, Seattle's motion is GRANTED.

DATED this 3rd day of May, 2019.

Mr S Casnik

Robert S. Lasnik
United States District Judge